

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC SHANE GRINNEL,

Defendant-Appellant.

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UNPUBLISHED

November 30, 2004

No. 249993

Oakland Circuit Court

LC No. 02-188039-FH

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for assault and battery, MCL 750.81. Defendant was sentenced to one year of probation for the assault and battery conviction, with various conditions. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that the trial court abused its discretion by admitting other-acts evidence. We disagree.

This Court reviews the admission of evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion exists only if an unprejudiced person, considering the facts on which the trial court acted, would say that there is no justification or excuse for the trial court's decision. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). A trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

MRE 404(b) provides, in part:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

In order for other-acts evidence to be admissible: (1) the evidence must be offered for a proper purpose under MRE 404(b), (2) the evidence must be relevant under MRE 402, and (3) the probative value of the evidence must not be substantially outweighed by unfair prejudice. *Crawford, supra*, 458 Mich 385. Also, the trial court may, upon request, provide limiting instructions to the jury. *Id.* “Under this formulation, the prosecution bears the initial burden of establishing relevance of the evidence to prove a fact within one of the exceptions to the general exclusionary rule of MRE 404(b).” *Id.* As noted, other-acts evidence may be admissible to show “proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material[.]” MRE 404(b); see also *People v Lukity*, 460 Mich 484, 499; 596 NW2d 607 (1999).

The trial court did not abuse its discretion when it admitted the other-acts testimony. The trial court employed the proper analysis for the admission of the evidence. The other-acts evidence was offered for a proper purpose under MRE 404(b), specifically, to show a common plan, scheme, or design. The threats from defendant to keep things quiet were probative of this plan or system for doing an act. Additionally, the evidence was relevant under MRE 402. The evidence of other acts made the facts in dispute in this case, specifically whether defendant intentionally hit the child, more probable. Moreover, the high probative value of the information outweighed any unfair prejudice defendant may have experienced. Applying this analysis, it was not an abuse of discretion for the trial court to admit the other-acts evidence.

Even so, any purported error in the instant case was harmless. “Evidentiary error does not merit reversal unless it involves a substantial right, and after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative.” *People v Moorer* 262 Mich App 64, 74; 683 NW2d 736 (2004). Independent of the other-acts evidence, the court found that defendant was home alone with the children and evidently found one child’s testimony regarding the charged offense credible. Additionally, the trial court found credible the testimony of defendant’s spouse, who stated that she was not at home at the time of the incident, that she wanted to take the injured child to the doctor upon discovering the injury, and that she took the child to the doctor alone. The trial court also found credible a physician’s testimony that a child told him defendant had problems with his temper. Testimony of other witnesses, substantiated by defendant himself, led the trial court to conclude that defendant “from time to time” did lose his temper and struck the child in a momentary “loss of control.” The trial court evaluated the testimony of all the witnesses and based its findings on its view of the various pieces evidence, while at the same time specifically noting that the other-acts evidence was not entirely credible. Any alleged error was not outcome-determinative in the instant case. Therefore, defendant’s contention of error is without merit.

Affirmed.

/s/ Patrick M. Meter

/s/ Kurtis T. Wilder

/s/ Bill Schuette